IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1447

RETAIL STORE EMPLOYEES UNION, LOCAL 876, RETAIL CLERKS INTERNATIONAL ASSOCIATION, AFL-CIO,
Petitioner,
v.
NATIONAL LABOR RELATIONS BOARD,
Respondent.

REPLY BRIEF OF PETITIONER

THEODORE SACHS
MARSTON, SACHS, NUNN, KATES, KADUSHIN & O'HARE, P.C.
Attorneys for Petitioner
1000 Farmer
Detroit, Michigan 48226
(313) 965-3464

THE INLAND PRESS, DETROIT, MICHIGAN

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1447

RETAIL STORE EMPLOYEES UNION, LOCAL 876, RETAIL CLERKS INTERNATIONAL ASSOCIATION, AFL-CIO,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

REPLY BRIEF OF PETITIONER

The Labor Board's brief in opposition assiduously declines to explain how a statutory provision which forbids discrimination against an employee only "because he has filed charges or given testimony under" the Act, §8(a)(4), 29 USC §158(a)(4), can apply where the employee concededly has done neither.

The Board unresponsively argues that it is important that it not be misled by hearing allegedly dubious testimony (Brief in Opposition, 5). Evidently, the rationale of this Court in treating pre-hearing statements in fact given to Board agents as "testimony" for purposes of §8(a)(4)—to keep "channels of information" open to the Board, *NLRB* v *Scrivener*, 405 US 117, 122 (1972)—is to be rejected by the Board when it prefers not to listen.

Unless §8(a)(4) and similar legislation (see Petition, 6-7) mean one thing for the Labor Board and for other federal agencies, and something else for respondent employers, the Court should grant the Petition and reverse the decision below.

Respectfully submitted,
/s/ THEODORE SACHS
Attorney for Petitioner
1000 Farmer
Detroit, Michigan 48226
(313) 965-3464

June, 1978